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PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Timothy R. Hawes  
For: FENDER ASSEMBLY AND ADJUSTABLE MOUNTING BRACKET THEREFOR  
Serial No.: 10/064,350 Examiner: Frank B. Vanaman  
Filed: 07/03/02 Group Art Unit: 3618  
Atty. Docket: 71234-0046 Confirmation No: 9613

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a))	
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<input type="checkbox"/> deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA, 22313-1450.	<input checked="" type="checkbox"/> transmitted by facsimile to the Patent and Trademark Office, to Examiner <u>Frank B. Vanaman</u> at (703) 872-8308.
Date: <u>July 7, 2005</u>	Signature: <u>Christine M. Judge</u> (type or print name of person certifying)

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR REINSTATEMENT OF APPEAL**

In response to the office action mailed April 7, 2005, Applicant hereby requests reinstatement of the Appeal in the above-identified matter. A Supplemental Appeal Brief is enclosed herewith. It is believed that no fees are due at this time because Applicant has already paid the Appeal fee as well as the Appeal Brief fee in the initial Appeal in this matter. However, in the event that any further fees are due, the Commissioner is requested to charge Deposit Account #50-2003.

Respectfully submitted,

Timothy R. Hawes

Dated: 7.7.05By: John E. McGarry

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In the Patent Application of

Timothy R. Hawes

Group Art Unit: 3632

Serial No.: 10/064,350

Examiner: Frank B. Bennett

Filed: July 3, 2004

For: FENDER ASSEMBLY AND  
ADJUSTABLE MOUNTING  
BRACKET THEREFOR

**SUPPLEMENTAL APPEAL BRIEF**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Brief is a Supplemental Appeal Brief filed under 37 C.F.R. § 41.37 in support of Appellant's Appeal of the Examiner's Non-Final Rejection of claims 1-7, 9-11, 13-19, 21, 25, and 30-39 in the Office Action mailed April 7, 2005. Each of the topics required by 37 C.F.R. § 41.37 is presented herewith and is labeled appropriately.

This Supplemental Brief is necessary because the original brief filed by Appellant in this matter is moot in view of the Examiner's withdrawal of the Final Rejection in this matter. In the Examiner's withdrawal of the Final Rejection, the Examiner abandoned reliance on any of the references that were applied in the initial Final Rejection of this application. Instead, the Examiner applied four new references (only one of which is newly cited) and presented an entirely new theory of unpatentability of nearly all of the claims that were previously on Appeal and several others. In view of the Examiner's apparent determination to deny patentability of any significant scope to the claimed invention in this application, Appellant has chosen to

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reinstate the appeal rather than reopen prosecution with the new applied references. Appellants believe that this Supplemental Appeal Brief will avoid any further delay in a review of the Examiner's rejection by the Board of Patent Appeals and Interferences.

### **I. REAL PARTY IN INTEREST**

Fleet Engineers, Inc., having offices in Muskegon, Michigan ("Fleet") is the real party in interest of the present application. An assignment of all rights in the present application to Fleet was executed by the inventors and recorded in the U.S. Patent and Trademark Office at Reel 012853, Frame 0230.

### **II. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences related to the present application of which the Appellant is aware.

### **III. STATUS OF CLAIMS**

Claims 1-7 and 9-51 are pending in the application. Claims 12, 20, 22-24, 26-29, and 40-51 are objected to but as depending from rejected claims but would be allowed if rewritten in independent form. Claims 1-7, 9-11, 13-19, 21, 25, and 30-39, which are presented in the Appendix, have been rejected by the Examiner. Accordingly, Appellants hereby appeal the rejection of claims 1-7, 9-11, 13-19, 21, 25, and 30-39.

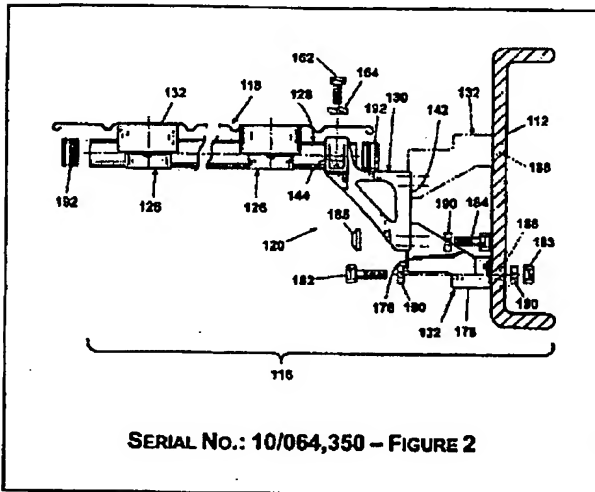
### **IV. STATUS OF AMENDMENTS**

It is believed that all amendments have been entered.

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### V. SUMMARY OF CLAIMED SUBJECT MATTER



A fender assembly 116 for a wheeled vehicle comprises a fender 118 adapted to overlies at least one of the wheels and having an upper surface and a lower surface. An elongated support arm 128 is mounted to either of the upper or lower surfaces of the fender 118 and has a longitudinal axis. A bracket assembly 121 is mounted to the support arm 128 and has a connector 182 for mounting the bracket assembly 121 to the

vehicle frame for rotation about axis of rotation substantially parallel to and spaced from the longitudinal axis of the elongated support arm 128 to define an offset distance therebetween. The connector 182 includes a length adjustable link 130, 132 to selectively adjust the offset distance between the longitudinal axis of the elongated support arm 128 and the axis of rotation of the bracket assembly 121. *Application as filed, pg. 5, ln. 3-27; pg. 6, ln. 5-9, 36; pg. 7, ln. 1-33; pg. 8, ln. 4-34; pg. 9, ln. 1-6.*

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The fender mounting bracket 121 comprises an elongated support arm 128 that is adapted to be mounted to either of an upper or lower surface of the fender 118 and defines a longitudinal axis. A length-adjustable link connection 130, 132 has a first portion 130 connected to the elongated support arm 128 through a collar 136 and a second portion 132 adapted to be rotatably mounted to the vehicle frame through bolt 182 and nut 183 at a rotational axis spaced from the longitudinal axis of the elongated arm 128, wherein the offset spacing between the arm longitudinal axis of the support arm 128 and the rotational axis of the bolt 182 can be changed by adjusting the length of the link 130, 132 through a bolt 184 and a nut 185. Each of the link elements 130 and 132 have facing serrations that assist in locking the link elements in an adjusted position. *Application as filed, pg. 5, ln. 3-27; pg. 6,*

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*ln. 5-9, 36; pg. 7, ln. 1-33; pg. 8, ln. 4-34; pg. 9, ln. 1-6*

#### **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. In the Office Action of April 7, 2005, the Examiner rejected claims 31-39 under 35 U.S.C. § 102(e) as being anticipated by the Takahashi et al. U.S. Patent No. 6,273,631 (Takahashi et al. '631 patent). Appellant disagrees with the Examiner's assertion that claims 31-39 are anticipated by the Takahashi et al. '631 reference.

2. In the Office Action of April 7, 2005, the Examiner rejected claims 1-5, 13-19, 21, and 25 under 35 U.S.C. § 103(a) as being unpatentable over the Mortvedt et al. U.S. Patent No. 4,591,178 (Mortvedt et al. '178 patent) in view of the Takahashi et al. '631 patent. Appellant disagrees with the Examiner's assertion that the Mortvedt et al. '178 and the Takahashi et al. '631 patents render claims 1-5, 13-19, 21, and 25 obvious to one skilled in the art.

3. In the Office Action of April 7, 2005, the Examiner rejected claims 6, 7, 9, 10, and 11 as obvious under 35 U.S.C. § 103(a) over the Mortvedt et al. '178 patent in view of the Takahashi et al. '631 and the Burrell et al. U.S. Patent No. 3,765,636 (Burrell et al. '636 patent). Appellant disagrees with the Examiner's assertion that the Mortvedt et al. '178, the Takahashi et al. '631, and Burrell et al. '636 patents render claims 6, 7, 10, and 11 obvious to one skilled in the art.

4. In the Office Action of April 7, 2005, the Examiner rejected claim 30 as obvious under 35 U.S.C. § 103(a) over the Mortvedt et al. '178 patent in view of the Takahashi et al. '631 patent and the Rowland U.S. Patent No. 5,511,808 (Rowland '808 patent). Appellant disagrees with the Examiner's assertion that the Mortvedt et al. '178, the Takahashi et al. '631 and the Rowland '808 references render claim 30 obvious.

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## VII. ARGUMENT

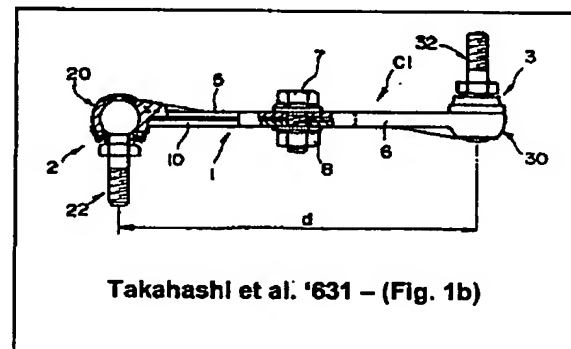
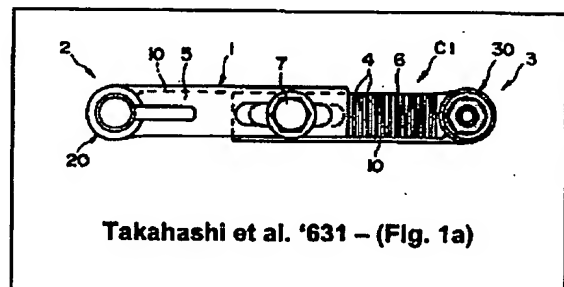
### 1. THE INVENTIONS OF CLAIMS 30-39 ARE NOT ANTICIPATED BY THE TAKAHASHI ET AL. '631 PATENT.

The claimed invention is not anticipated under §102 unless each and every element of the claimed invention is found in the prior art. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In order for claims 31-39 to be anticipated under 35 U.S.C. § 102(e), the Takahashi et al. '631 reference must disclose each and every element of each of these claims. The Takahashi et al. '631 reference does not meet this standard.

The Takahashi et al. '631 patent discloses a connecting rod with ball joints 20, 30 at each end joined by a connecting portion that includes a connecting arm 5, 6 attached to each ball joint. Each of the connecting arms 5 and 6 have facing serrations 4 and a bolt 7 and a nut extends through openings in the connecting arms 5 and 6 to join the two connecting arms together. Each ball joint includes a ball holder integral with a connecting arm and a ball shank with a ball portion 24 within the ball holder and a threaded shank portion 23.

Claim 31 is an independent claim and claims 32-39 depend from claim 31. All of these claims are limited to a fender mounting bracket for a vehicle. The Takahashi et al. '631 patent does not disclose a fender mounting bracket for a vehicle as required by claims 31-39. The examiner has apparently disregarded this limitation in each of claims 31-39. The limitation of "a fender



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mounting bracket” must be given weight in the claims in view of the interrelationship between the recited elements of the fender mounting bracket and the fender. In particular, the elongated support arm is said to be “adapted to be mounted to either of the upper or lower surface of the fender.” This limitation gives meaning to the preamble that includes a fender mounting bracket. Therefore, the Takahashi et al. ‘631 patent fails to satisfy the claim limitation of fender mounting bracket as required by claims 31-39.

Further, the Takahashi et al. ‘631 references does not disclose an elongated arm that is adapted to be mounted to either of an upper or lower surface of a fender as required by each of claims 31-39. The Examiner has held that the ball shank 23 provides this limitation. Appellant believes that the examiner is in error in his interpretation of the clear claim language of claim 31. The Examiner has not stated how a ball shank could be adapted to mount to either the upper or lower surfaces of a fender. Indeed, there is no disclosure as to how Takahashi et al. ‘631 threaded shank 23 could perform the function of a support arm for a fender.

The language “adapted to be mounted to either of an upper or lower surface of the fender” must be given structural significance to the element “an elongated support arm”. *In re Venezia*, 530 F.2d 956, 958-958; 189 U.S.P.Q. (BNA) 149 (CCPA 1976).

The claimed invention does include present structural limitations on each part, which structural limitations are defined by how the parts are to be interconnected in the final assembly, if assembled. However, this is not to say that there anything futuristic or conditional in the “kit” of parts itself. For example, paragraph two of claim 31 calls for “a pair of sleeves ... each sleeve of said pair adapted to be fitted over the insulating jacket of one of said cables.” Rather than being a mere direction of activities to take place in the future, this language imparts a structural limitation to the sleeve. Each sleeve is so structured or dimensioned that it can be fitted over the insulating jacket of a cable. A similar situation exists with respect to the “adapted to be affixed” and “adapted to be positioned” limitations in the third and fourth paragraphs of the claim.

The “adapted to” language in claim 31 is structural in nature, because it modifies the term “elongated support arm” to say that it has some special structure for mounting the arm either to the upper or lower surface of a fender and to thereby support the fender. The threaded shank of

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Takahashi et al. '631 cannot perform the support function cited in claim 31 and further is not in any way adapted to be mounted to either of the upper or lower surface of a fender.

Therefore, claims 31-39 are not anticipated under 35 U.S.C. § 102(e) by the Takahashi et al. '631 patent.

2. **THE INVENTIONS OF CLAIMS 1-5, 13-19, 21 AND 25 ARE NOT OBVIOUS UNDER 35 U.S.C. § 103(A) OVER THE MORTVEDT ET AL. '178 PATENT IN VIEW OF THE TAKAHASHI ET AL. '631 PATENT.**

The Examiner's assertion of obviousness should be reversed since the Examiner has failed to satisfy the legal requirements for a *prima facie* case of obviousness.

A conclusion of obviousness must be based upon an Examiner's factual findings. "The factual predicates underlying an obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art." *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

To establish a *prima facie* case of obviousness, three basic criteria must be met:

1. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
2. There must be a reasonable expectation of success.
3. The prior art reference must teach or suggest all the claimed limitations.

*In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See also, MPEP 706.02(j) and 2143-2143.03.<sup>1</sup>

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<sup>1</sup> According to the MPEP, the Examiner should identify (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, (B) the difference or differences in the claim over the applied reference(s), (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and (D) an explanation why one of ordinary skill in the art at the time the invention was made would



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In order to tenably combine references, there must be some suggestion in the references in order to make a tenable combination of disclosures. *In re Sang-Su Lee*, 277 F.3d 1338, 56 USPQ2d 1430 (Fed. Cir. 2000); *Ecolochem, Inc. v. Southern California Edison Company*, 277 F.3d 1361, 56 USPQ2d 1065 (Fed. Cir. 2000). As aptly stated by Judge Newman in *Sang-Su Lee*,

...The patent examination process centers on prior art and the analysis thereof. When patentability turns on question of obviousness, the search for an analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. . . .

"The factual inquiry whether to combine references must be thorough and searching." [Citation omitted] It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions and cannot be dispensed with. ... *In re Dembiczak* 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against subtle but powerful attraction of a hindsight based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.")

If any one of the obviousness criteria is not met, then a *prima facie* case of obviousness has not been made. In the present case, the rejection fails to meet several of the criteria, making the rejection unsustainable and the inventions of claims 1-5, 13-19, 21 and 25 patentable. An analysis of the criteria supports this conclusion.

The Examiner's description of the Mortvedt et al. '178 patent is essentially correct in that it describes the subject matter of claim 1 with the exception of the last paragraph in claim 1. However, there is additional disclosure in the Mortvedt et al. '178 which bears on the issue of obviousness. The Mortvedt et al. '178 reference disclosing a quick attach fender and bracket assembly for a tractor. This assembly comprises a pair of brackets 22 and 24, each of which has a mounting plate with an opening for mounting the mounting plate to the frame of the vehicle. Further, each of the brackets 22 and 24 has an elongated rod 28 and 36, respectively, projecting  
(..continued)

have been motivated to make the proposed modification. *MPEP 706.02(j)*.

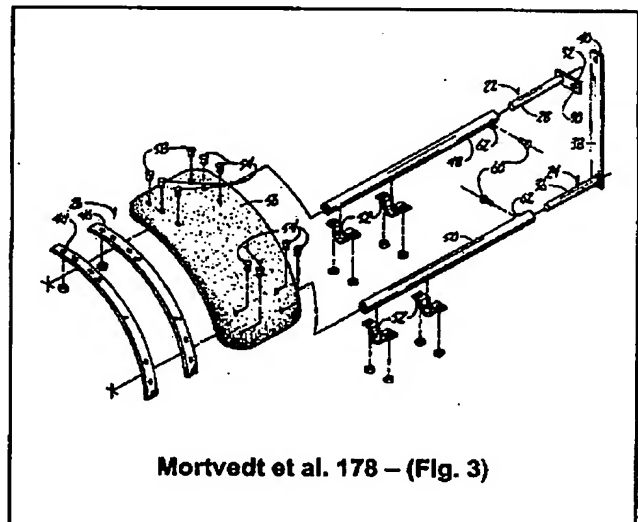
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laterally therefrom. The Mortvedt et al. '178 fender assembly further has a pair of elongated tubes 48 and 50 which are mounted to the fender 58 through a series of U-shaped brackets 52, straps 44 and 46 and bolts 54. The tubes 48 and 50 are telescopically mounted on the rods 28 and 36, respectively, and are releasably secured thereon by set screws 60. The purpose of this mounting is to provide a means by which a fender can be quickly attached and removed from a tractor after the brackets 22 and 24 have been appropriately mounted on the frame. Mortvedt et al. '178 further disclosed in column 3, lines 20-26:

The brackets 22, 24 are adaptable to various models and forms of tractors. They may be pivoted about bolts 34, 42 so that the shafts 28, 36 are in proper position for receiving the sleeves 48, 50 of the shield assembly 26. However, once the position of the brackets 22, 24 has been properly ascertained, these brackets may be secured permanently against movement by tightening of bolts 34, 42. The use of set screws or bolts 60 also adds to the flexibility of the device by providing infinite longitudinal and rotational adjustment of sleeves 48, 50 with respect to shafts 22, 24.

The significance of this disclosure is that Mortvedt et al. believe that the brackets in combination with the frame openings of a tractor are adaptable for any known tractor. The ability of the brackets to be mounted in any one of a number of holes in the tractor and further the ability of the bracket 38 to rotate about its mounting through bolt 42 adapt the mounting brackets to mount the fender assembly to any conceivable tractor. There is no reason for any additional adjustments in the disclosure of the Mortvedt et al. '178 fender and bracket assembly.



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a. **The Examiner has failed to satisfy the legal requirement for a prima facie case of obviousness.**

There is no basis for making the alleged combination of Mortvedt et al. '178 with Takahashi et al. '631. There is nothing in either of the references which would suggest their combination. When one reads the Mortvedt et al. '178 reference, it is clear that the bracket assembly of Mortvedt et al. '178 is capable of all necessary adjustments in order to properly place the fender in an appropriate mud shielding position on the tractor. See column 3, lines 20-26. ("The brackets 22, 24 are adaptable to various models and forms of tractors. They may be pivoted about bolts 34, 42 so that the shafts 28, 36 are in proper position for receiving the sleeves 48, 50 of the shield assembly 26.") There is no perceived need, and consequently no perceived motivation in Mortvedt et al. '178 for modifying the Mortvedt bracket 38 with an adjustment as described in the Takahashi et al. '631 patent.

Likewise, there is no disclosure in the Takahashi et al. '631 patent of the use of the adjustment features of the connecting rod in a fender mounting assembly. The fact that the Takahashi et al. '631 connecting rod is used on a vehicle is not motivation to use the Takahashi adjusting plates anywhere else in a vehicle. Certainly, there is no disclosure or suggestion in Takahashi et al. '631 to use the length-adjusting plates in a fender mounting bracket. The Takahashi et al. '631 and the Mortvedt et al. '178 references are entirely different components that function in a different way to achieve a different result.

In accordance with the admonition of *In re Sang-Su Lee, supra*, the Takahashi et al. '631 disclosure cannot be tenably combined with the Mortvedt et al. '178 disclosure. There is no suggestion or motivation for this combination because Takahashi et al. '631 adds nothing to the function of the Mortvedt et al. '178. Mortvedt et al. '178 has no need for an adjustment bracket because all of the possible combinations necessary for the fender of Mortvedt et al. '178 are covered by the disclosed structure. There is simply no perceived need in Mortvedt et al. '178 for any kind of adjustment of either of the mounting plates 30 or 38.

Neither Mortvedt et al. '178 nor Takahashi et al. '631 recognize the problem which

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Appellant has solved. The problem which Appellant has solved is to make a mounting bracket vertically adjustable because the space for positioning mounting brackets on road vehicles such as heavy duty trucks is very limited. This problem was not a problem to Mortvedt et al. because Mortvedt et al. was dealing with tractors which have ample space for mounting fenders. The Examiner has given no cogent reason why it would be obvious to combine the teachings of Takahashi et al. '631 with the Mortvedt et al. '178 reference. The Examiner attempts to bootstrap his hindsight combination of these references by merely stating the conclusion that the combination would be made "for the purpose of allowing the angle of the fender to be adjusted." That conclusory statement is not a fact or reason. It is not evidence of obviousness. Nor is it a basis for making the alleged combination of reference. It is merely a hindsight recognition of a function that would result from the combination. However, this function is not seen as being a desirable function by Mortvedt et al. Adjustment of the angle of the fender can easily be made by rotating the Mortvedt et al. '178 brackets 32 and 38 to an appropriate position or by selecting appropriate holes in the tractor frame in which to mount the brackets 32 and 38. No further adjustments are necessary to the Mortvedt et al. '178 fender mounting assembly.

Because the alleged combination of Mortvedt et al. '178 with Takahashi et al. '631 is inappropriate, claims 1-5, 13-19, 21, and 25 are not met by the combination. Claims 2-5, 13-19, 21, and 25 all depend from claim 1 either directly or indirectly. Claim 1 and the claims dependant therefrom distinguish over the alleged combination of Mortvedt et al. '178 and Takahashi et al. '631 in the length adjustable link to selectively offset the distance between the longitudinal axis of the elongated support arm and the axis of rotation of the bracket assembly. The alleged combination of references is inappropriate to meet the combination of claim 1 and the claims dependent therefrom.

3. **The Inventions of claims 6, 7, 9, 10, and 11 are not obvious under 35 U.S.C. § 103(a) over the Mortvedt et al. '178 patent in view of the Takahashi et al. '631 patent and in view of the Burrell et al. '636 patent.**

The uncombinability of the Mortvedt et al. '178 and Takahashi et al. '631 references has

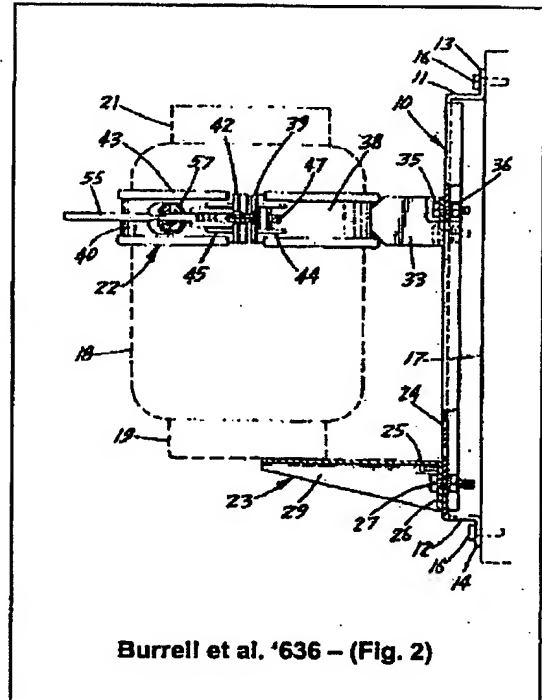
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been discussed above. It is believed that the arguments with respect to the uncombinability of these references is also applicable to the combination of these references with the Burrell et al. '636 reference.

The Burrell et al. '636 patent discloses a vice for gas containers and similar tanks. The disclosure in Burrell et al. '636 reference which the Examiner finds relevant apparently is the clamp 22 formed by semi-circular arms 38 and 40 that are releasably joined by a releasable T-bolt.

"In order to rely on a reference as a basis for rejection of an Appellant's invention, the reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992).



Burrell et al. '636 is not in the field of Appellant's endeavor. Appellant's invention relates to an adjustable fender mounting bracket. Burrell et al. '636 relates to a vice for gas containers and similar tanks. These are widely disparate fields. In addition, Burrell et al. '636 is not reasonably pertinent to the particular problem with which Appellant was concerned. The purpose of the vice or clamp of Burrell et al. '636 is for rigidly supporting and holding tanks, such as containers for compressed and liquefied gases such as refrigerant gases, fuel gases, and the like, while the valve assemblies are removed and installed. The gas container is held securely against rotation to permit relative rotation of the valve assembly. The vice is of simple construction to permit easy placement and removal of the gas container.

Thus, Burrell et al. '636 is not analogous art and cannot be relied on to support the

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**Examiner's rejection.**

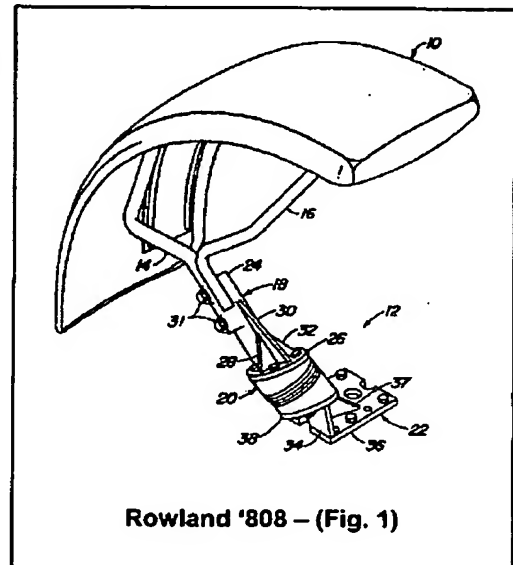
Furthermore, there is no suggestion in either of Mortvedt et al. '178 or Takahashi et al. '631 to use the type of vice clamp disclosed in the Burrell et al. '636 reference. The Examiner's statement that it would be obvious to use the flanges on the sides of the nut in the fastening arrangement of Mortvedt as modified by Takahashi is pure speculation and clear evidence of the Examiner's hindsight reconstruction of Appellant's claims. There is clearly no suggestion in any of the references that would warrant their combination. The Examiner has given us none either.

In view of the foregoing, it is apparent that the Examiner's alleged combination of Mortvedt et al. '178 in view of Takahashi et al. '631 and Burrell et al. '636 is pure hindsight reconstruction of the references using Appellant's claims as a guide. There is nothing in any of the references which would suggest their combination. Accordingly, claims 6, 7, 9, 10, and 11 are all directly or indirectly dependent on claim 1 and are not obvious under 35 U.S.C. § 103(a) over Mortvedt et al. '178 in view of Takahashi et al. '631 and Burrell et al. '636.

**4. Claim 30 is not obvious over Mortvedt et al. '178 in view of Takahashi et al. '631 and Rowland U.S. Patent No. 5,511,808.**

The Examiner's alleged combination of Mortvedt et al. '178 and Takahashi et al. '631 has been discussed above and is equally applicable here. The alleged combination of these two references is fatally flawed and accordingly fatally flaws the alleged combination of these two references with the Rowland '808 patent.

The Rowland '808 patent discloses a flexible fender mount wherein flexible bushing 20 is affixed at one end to a mounting bracket 22 and at another end to a support bracket 18 which in turn is rigidly attached to a fender through a pair of arms 16. The function of the bushing 20 is to mount the fender 10 for flexibility to



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bend as well as to pivot about an axis. The bushing also provides insulation or dampening the fender from fatigue of hard shocks from axle or tire dynamics.

The alleged combination of Mortvedt et al. '178 with Takahashi et al. 631 and Rowland '808 is traversed. There is no basis for making the alleged combination. There is no disclosure or suggestion in any of the references which would lend combinability as alleged by the Examiner. The Examiner has not provided any reason why the Rowland bushing would be incorporated into either the Takahashi et al. '631 or the Mortvedt et al. '178 mounting structures.

a. **The Examiner's alleged combination of Mortvedt et al. '178, Takahashi et al. '631 and Rowland '808 does not meet claim 30.**

Claim 30 depends from claim 1 and calls for a vibration-decoupling connector connecting the support arm to the fender. According to claim 1, the support arm is mounted to either the upper or lower surfaces of the fender and has a longitudinal axis. In the alleged combination of these three references, use of the Rowland rubber bushing in the Mortvedt et al. '178 fender mount would place the bushing between the mounting bracket 38 and the rod 24. More precisely, if, as the Examiner alleges, the mounting plate 38 can be modified with the two part Takahashi et al. '631 adjustable features, then the Rowland '808 bushing might be mounted between either the first arm or the second arm of the modified plate 38 or between the second arm and the rod 24. Alternatively, the Rowland '808 bushing would be mounted perhaps to a separate plate as disclosed in Rowland '808 which is attached to the vehicle frame and the mounting plate 38 of Mortvedt et al. The Examiner has given us no guidance as to how this substitution would be made other than to say it would be placed between the mounting arms and the fender. However, the Rowland '808 patent does not disclose mounting of a bushing between the fender and the elongated support arm.

However, this combination does not reach Appellant's claimed invention of claim 30. Claim 30, which depends from claim 1, calls for a vibration-decoupling connector connecting the support arm to the fender. The alleged combination would not provide the decoupler between the support arm 48 and the fender 56 of Mortvedt et al. '178. Rather, it would provide at some

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other distal location, presumably between the frame and the mounting plate 38.

Therefore, claim 30 is not obvious under 35 U.S.C. § 103(a) over the Mortvedt et al. '178 patent in view of the Takahashi et al. '631 and the Rowland '808 references.

### CONCLUSION

In view of the foregoing, it is submitted that the rejection of claims 1-7, 9-11, 13-19, 21, 25, and 30-39 is improper and should not be sustained. Therefore, a reversal of the rejections of these claims is respectfully requested.

Respectfully submitted,  
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### **VIII. CLAIMS APPENDIX**

1. A fender assembly for a vehicle comprising a longitudinal frame and carrying ground-engaging wheels supporting the frame above a road surface and positioned laterally of the frame, the fender assembly comprising:

a fender of a relatively linear cross dimension adapted to overlie at least one of the wheels and having an upper surface and a lower surface;

an elongated support arm mounted to either of the upper or lower surfaces of the fender and having a longitudinal axis;

a bracket assembly mounted to the support arm and having a connector for mounting the bracket assembly to the vehicle frame for rotation about an axis of rotation substantially parallel to and spaced from the longitudinal axis of the elongated support arm to define an offset distance therebetween; and

the bracket assembly further including a length-adjustable link to selectively adjust the offset distance between the longitudinal axis of the elongated support arm and the axis of rotation of the bracket assembly.

2. The fender assembly according to claim 1 wherein the length-adjustable link comprises a first bracket mounted to the support arm, a second bracket coupled to the connector, and the first and second brackets are coupled together for relative vertical movement therebetween.

3. The fender assembly according to claim 2 and further comprising a releasable fastener extending through the first and second brackets such that when the releasable fastener is in an unreleased condition, the relative position of the first and second brackets is fixed, and when the releasable fastener is in a released condition, the first and second brackets are adjustable relative to each other.

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4. The fender assembly according to claim 3 wherein the releasable fastener comprises a bolt extending through aligned first and second openings in the first and second brackets, respectively, and a nut threadably mounted on the bolt, wherein the bolt is tightened to place the fastener in the unreleased condition, and the bolt is loosened to place the fastener in the released condition.

5. The fender assembly according to claim 4 wherein the nut comprises a base that abuts the first bracket when the fastener is in the unreleased condition.

6. The fender assembly according to claim 9 wherein the base has linear edges that interface with the spaced gussets to restrain relative rotation of the nut with respect to the first bracket.

7. The fender assembly according to claim 6 wherein the area of the base abutting the first bracket is at least twice as great as the cross-sectional area of the bolt.

\* \* \*

9. The fender assembly according to claim 5 wherein the first bracket comprises flanges defining a channel therebetween and the base width is substantially equal to the channel width.

10. The fender assembly according to claim 6 wherein the base is rectangular.

11. The fender assembly according to claim 10 wherein the nut further comprises a collar extending from the base and defining a threaded opening within the collar.

\* \* \*

13. The fender assembly according to claim 4 wherein at least one of the aligned first and second openings is a slot.

14. The fender assembly according to claim 13 wherein both aligned first and second openings are slots.

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15. The fender assembly according to claim 4 wherein the first and second brackets each have a face with a serration and the serrations mesh when the fastener is in the unreleased position.

16. The fender assembly according to claim 15 wherein a pair of spaced, parallel serrations is provided on both faces.

17. The fender assembly according to claim 16 wherein the first and second openings lie between the parallel serrations.

18. The fender assembly according to claim 17 wherein the second bracket further comprises a platform that acts as a support when in the unreleased position.

19. The fender assembly according to claim 4 wherein the second bracket comprises a substantially flat plate having opposing faces through which the second opening passes.

\* \* \*

21. The fender assembly according to claim 4 and further comprising a second fastener and the second bracket has a third opening that receives the second fastener, wherein the second fastener is adapted to pass through the vehicle frame and into the third opening to form the rotatable mount.

\* \* \*

25. The fender assembly according to claim 4 wherein the first bracket comprises a releasable mount for rotatably mounting the elongated support arm thereto.

\* \* \*

30. The fender assembly according to claim 1 and further comprising at least one vibration-decoupling connector connecting the support arm to the fender.

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31. A fender mounting bracket for a vehicle comprising a longitudinal frame that carries ground engaging wheels above which is supported a fender, the fender mounting assembly comprising:

an elongated support arm adapted to be mounted to either of an upper or lower surface of the fender and defining a longitudinal axis;

a length-adjustable link connection having a first portion connected to the elongated support arm and a second portion adapted to be rotatably mounted to a vehicle frame at a rotational axis spaced from the longitudinal axis of the elongated arm, wherein the offset spacing between the arm longitudinal axis and the rotational axis can be changed by adjusting the length of the link.

32. The fender mounting bracket according to claim 31 wherein the first portion comprises a first bracket mounted to the support arm and the second portion comprises a second bracket mounted to the first bracket for relative movement therebetween.

33. The fender mounting bracket according to claim 32 and further comprising a releasable fastener extending through first and second openings in the first and second brackets, respectively, such that when the releasable fastener is in an unreleased condition, the relative position of the first and second brackets is fixed, and when the releasable fastener is in a released condition, the first and second brackets are selectively adjustable relative to each other.

34. The fender mounting bracket according to claim 33 wherein the first and second brackets each have a face with a serration and the serrations mesh when the fastener is in the unreleased position.

35. The fender mounting bracket according to claim 34 wherein a pair of spaced, parallel serrations is provided on both faces.

36. The fender mounting bracket according to claim 35 wherein the first and second openings lie between the parallel serrations.

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37. The fender mounting bracket according to claim 36 and further comprising a mounting fastener, and wherein the second bracket has a third opening that receives the mounting fastener, wherein the mounting fastener is adapted to pass through the vehicle frame and into the third opening for rotatably mounting the second bracket to the vehicle frame.

38. The fender mounting bracket according to claim 36 wherein the second bracket comprises a collar in which is formed the third opening and an end plate is connected to the collar, and one side of the end plate forms the corresponding face on which the corresponding serrations are located.

39. The fender mounting bracket according to claim 38 wherein the second bracket further comprises a gusset connecting the end plate to the collar.